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**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5803**

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**State of Washington 67th Legislature 2022 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Rolfes, Dhingra, Frockt, and Nobles)

AN ACT Relating to mitigating the risk of wildfires caused by an electric utility's equipment; amending RCW 76.04.780; adding new sections to chapter 76.04 RCW; adding a new section to chapter 80.28 RCW; adding a new section to chapter 19.29A RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  (1) It is in the best interest of the state, our citizens, and our landscapes to identify the sources of wildland fires; identify and implement best practices to reduce the prevalence and intensity of those wildland fires; put those practices in place; and by putting those practices in place, reduce the risk of wildland fires and damage resulting from those fires.

(2) The legislature finds that electric utilities are partners with relevant state agencies, emergency responders, and public and private entities in identifying best practices to reduce the risk of and prevent wildland fires. Many electric utilities have developed and are implementing wildfire mitigation plans. The legislature further finds that electric utilities should adopt and implement wildfire mitigation plans, and that electric utilities should be informed by recognized best practices, as applicable to their geography, terrain, vegetation, and other characteristics specific in their service area, for reducing wildland fire risk and reducing damage from wildland fires as may be ignited by electric utility equipment.

(3) Therefore, the legislature intends to authorize the development of best practices guidelines and to require that electric utilities provide their wildfire mitigation plans to the state in order to promote public transparency and to obtain review of the plans for inclusion of applicable best practices guidelines.

NEW SECTION. **Sec.**  A new section is added to chapter 76.04 RCW to read as follows:

(1) The department shall contract with an independent consultant with experience in developing utility wildfire mitigation plans to recommend a format and a list of elements to be included in electric utility wildfire mitigation plans, including best practices guidance that may apply to each element as appropriate. In developing the format and list of elements, the department shall seek input from the utilities and transportation commission, the energy emergency management office of the department of commerce, the utility wildland fire prevention advisory committee, electric utilities, the state fire marshal, the governor's office of Indian affairs, and the public. By April 1, 2023, the department shall make public a recommended format and list of elements for electric utility wildfire mitigation plans.

(2) The recommended elements must acknowledge that utilities serve areas that vary in topography, vegetation, population, and other characteristics, and that best practices guidelines within each element must recognize that a utility's wildfire mitigation plan will be designed to fit site-specific circumstances. The recommended elements must include, but are not limited to:

(a) Vegetation management along transmission and distribution lines and near associated equipment;

(b) Infrastructure inspection and maintenance repair activities, schedules, and recordkeeping;

(c) Modifications or upgrades to facilities and construction of new facilities to incorporate cost-effective measures to minimize fire risk;

(d) Preventative programs, including adoption of new technologies to harden utility infrastructure; and

(e) Operational procedures.

(3) The recommended format and list of elements developed by the department must be forwarded to the utilities and transportation commission, the energy emergency management office of the department of commerce, and all electric utilities in Washington state for a review period of three months prior to finalizing the format and list of elements that utilities will use to adopt or update their electric utility wildfire mitigation plan.

(4) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Consumer-owned utility" means a municipal electric utility, public utility district, irrigation district, cooperative, or mutual corporation association.

(b) "Electric utility" means: (i) An electrical company as defined in RCW 80.04.010 that is engaged in the business of distributing electricity to one or more electric customers in the state; or (ii) a consumer-owned utility that is engaged in the business of distributing electricity to one or more electric customers in the state.

NEW SECTION. **Sec.**  A new section is added to chapter 80.28 RCW to read as follows:

By December 31, 2023, and every two years thereafter, each electrical company must review and revise, if appropriate, its wildfire mitigation plan. The plan should include a review of specific circumstances of that electrical company and incorporate as appropriate the recommendations developed pursuant to section 2 of this act. The electrical company must submit its plan to the commission and make the plan publicly available. Within six months of submission by the electrical company, the commission shall review the plan and confirm whether or not the plan contains the recommended elements. In reviewing the plan, the commission must consult with the department of natural resources and the energy emergency management office of the department of commerce. The commission's review of an electrical company's wildfire mitigation plan does not relieve an electrical company from proactively managing wildfire risk, including by monitoring emerging practices and technologies, and mitigating and responding to wildfires. The commission is not liable for an electrical company's performance implementing its wildfire mitigation plan. An electrical company may pursue recovery of costs and investments associated with a wildfire mitigation plan through a proceeding to set rates at the commission. Nothing in this section or sections 2, 4, and 6 of this act may be construed to preclude electrical companies from continuing to develop and implement wildfire mitigation measures. After the commission's review, the electrical company must provide a copy of the plan to the department of natural resources along with a list and description of wildland fires within its customer service area over the previous two years as reported by the department of natural resources. The plan must be posted as specified in section 6 of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 19.29A RCW to read as follows:

(1) By December 31, 2023, and every two years thereafter, each consumer-owned utility must review and revise, if appropriate, its wildfire mitigation plan. The plan should include a review of specific circumstances of that utility and incorporate as appropriate the recommendations developed pursuant to section 2 of this act.

(a) The governing board of each consumer-owned utility shall review the plan and confirm whether the plan contains the recommended elements. Local fire districts must be provided the opportunity to review and provide feedback during this period. After the governing board's review, the utility must provide a copy to the department of natural resources, along with a list and description of wildland fires within its customer service area over the previous two years as reported by the department of natural resources. The plan must be posted as specified in section 6 of this act.

(b) Each consumer-owned utility must also provide its plan to the energy emergency management office of the department of commerce for review, which must review the plans and provide feedback within six months for consideration for inclusion in the next plan revision.

(c) By December 31, 2022, each utility must provide a copy of their most recent plan to the department of natural resources and it must be posted on a website.

(d) By December 31, 2023, the energy emergency management office will be available to provide technical assistance to consumer-owned utilities to include the best practices guidelines in their revision of plans.

(2) Two or more abutting utilities may codevelop a wildfire mitigation plan. Wildfire mitigation plans that are codeveloped by more than one utility may identify areas of common implementation, including communication protocols, that will assist in implementing the recommended elements pursuant to section 2 of this act.

(3) Nothing in this section prohibits a utility from reviewing or updating its wildfire mitigation plan more often than every two years or requires that the utility submit their plan beyond the requirements of subsection (1) of this section.

**Sec.**  RCW 76.04.780 and 2021 c 183 s 1 are each amended to read as follows:

(1) The commissioner shall convene a utility wildland fire prevention advisory committee with electrical power distribution utilities by August 1, 2021. The duties of the advisory committee are to advise the department on issues including, but not limited to:

(a) Matters related to the ongoing implementation of the relevant recommendations of the electric utility wildland fire prevention task force established in chapter 77, Laws of 2019, and by August 1, 2021:

(i) Finalizing a model agreement for managing danger trees and other vegetation adjacent to utility rights-of-way on state uplands managed by the department;

(ii) Implementing recommendations of the task force related to communications and information exchanges between the department and utilities;

(iii) Implementing recommendations of the task force related to protocols and thresholds when implementing provisions of RCW 76.04.015; and

(iv) Implementing recommendations of the task force related to creating rosters of certified wildland fire investigator firms or persons and qualified utility operations personnel who may be called upon as appropriate;

(b) Providing a forum for electric utilities, the department, and other fire suppression organizations of the state to identify and develop solutions to issues of ((~~wildfire~~)) wildland fire prevention and risk mitigation specifically related to electric utilities transmission and distribution networks, identification of best management practices, electric utility infrastructure protection, and wildland fire suppression and response;

(c) Establishing joint public communications protocols among members of the advisory committee, and other entities, to inform residents of the state of potential critical fire weather events and the potential for power outages or disruptions;

(d) Providing comment to the wildland fire advisory committee established in RCW 76.04.179 through an annual presentation addressing policies and priorities of the utility wildland fire prevention advisory committee; and

(e) All other related issues deemed necessary by the commissioner.

(2) By August 1, 2021, the department must post on its website and update quarterly as necessary:

(a) Communication protocols and educational exchanges between the department and electric utilities;

(b) A voluntary model danger tree management agreement to utilities for their consideration for execution with the department;

(c) Protocols and thresholds that may be utilized when the department's investigation involves electric utility infrastructure or potential electric utility liability; and

(d) A roster of third-party certified wildland fire investigators and qualified utility personnel that may assist the department or utility in understanding and reducing risks and liabilities from wildland fire.

(3) Beginning July 1, 2022, and at the beginning of each subsequent biennium thereafter, the department must submit, in compliance with RCW 43.01.036, a report describing the prior biennium proceedings of the advisory committee, including identification of recommended legislation, if any, necessary to prevent wildfires related to electric utilities. In addition, by December 31, 2022, the department must submit to the appropriate committees of the senate and house of representatives:

(a) A compilation and summary of existing wildfire mitigation plans maintained by electric utilities;

(b) An analysis of the costs and benefits of preparing and maintaining a comprehensive statewide wildland fire risk map that identifies relative risk classes, with detail at a level to assist property owners, local governments, utilities, wildland management agencies, and fire response agencies in taking actions to minimize wildland fire starts and resulting damage. The analysis must also address incorporating the boundaries of the wildland urban interface as mapped pursuant to RCW 19.27.031; and

(c) Recommendations for strengthening state agency coordination of wildland fire risk reduction, prevention, and suppression. In this work the utility wildland fire prevention advisory committee shall seek the views of the wildland fire advisory committee created under RCW 76.04.179, as well as the views of the department of commerce energy policy division and the emergency management division of the military department.

(4) The commissioner or the commissioner's designee must chair the advisory committee created in subsection (1) of this section and must appoint advisory committee members. The advisory committee must include a representative of the energy emergency management office of the department of commerce and a representative of the utilities and transportation commission. Advisory committee membership should also include:

(a) Entities providing retail electric service, including:

(i) One person representing each investor-owned utility;

(ii) Two persons representing municipal utilities;

(iii) Two persons representing public utility districts;

(iv) Two persons representing rural electric cooperatives;

(v) One person representing small forestland owners;

(vi) One person representing industrial forestland owners;

(b) Other persons with expertise in wildland fire risk reduction and prevention; and

(c) No more than two other persons designated by the commissioner.

(5) In addition to the advisory committee membership established in subsection (4) of this section, the commissioner shall designate two additional advisory committee members representing historically marginalized or underrepresented communities.

(6) The commissioner or the commissioner's designee shall convene the initial meeting of the advisory committee. The advisory committee chair must schedule and hold meetings on a regular basis in order to expeditiously accomplish the duties and make recommendations regarding the elements described in subsection (3) of this section.

(7) The members of the advisory committee, or individuals acting on their behalf, are immune from civil liability for official acts performed in the course of their duties specifically related to the advisory committee.

(8) Participation on the advisory committee created in subsection (1) of this section is strictly voluntary and without compensation.

(9) Any requirements in this section are subject to the availability of amounts appropriated for the specific purposes described.

NEW SECTION. **Sec.**  A new section is added to chapter 76.04 RCW to read as follows:

(1) The department must create a public website to host electric utility wildfire mitigation plans developed under sections 3 and 4 of this act.

(2) Nothing in this act may be construed to preclude electric utilities from continuing to develop and implement their wildfire mitigation plans. Electric utilities are encouraged to submit their 2022 plans to the department's energy emergency management office for inclusion on the website under subsection (1) of this section.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Consumer-owned utility" means a municipal electric utility, public utility district, irrigation district, cooperative, or mutual corporation association.

(b) "Electric utility" means: (i) An electrical company as defined in RCW 80.04.010 that is engaged in the business of distributing electricity to one or more electric customers in the state; or (ii) a consumer-owned utility that is engaged in the business of distributing electricity to one or more electric customers in the state.

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